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REPORT No. 87/23
PETITION 1548-11
REPORT ON ADMISSIBILITY

HORLEY RENGIFO PAREJA AND OTHERS
MEXICO

Approved electronically by the Commission on June 9, 2023.

Cite as: IACHR, Report No. 87/23, Petition 1548-11. Admissibility.
Horley Rengifo Pareja and others. Mexico. June 9, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Iram Benitez Martinez and Carlos Castellano Rojas
Alleged victim:	Horley Rengifo Pareja, Jenny Hurtado Beltran, Maria Camila Rengifo Hurtado and Ricardo Martinez Rodriguez
Respondent State:	Mexico ¹
Rights invoked:	Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 14 (right of reply), 17 (rights of the family), 24 (right to equal protection) of the American Convention on Human Rights, ² in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	November 4, 2011
Additional information received at the stage of initial review:	February 17 and 28, April 3, May 22, July 2 and 17, November 1 and 6, 2012; May 22, October 22 and 29 and November 12, 2013; January 6 and February 21, 2014.
Notification of the petition to the State:	December 29, 2015
State's first response:	June 8, 2016
Additional observations from the petitioner:	June 2, 2017
Additional observations from the State:	August 20, 2019
Precautionary measure granted:	499-11: not granted and 303-14: its closure is still under review

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument of ratification submitted on March 24, 1981); and Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification submitted on June 22, 1987)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
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¹ In accordance with article 17.2.a of the Rules of Procedure of the Commission, Commissioner Joel Hernández García, a Mexican national, did not take part in the debate or decision of the instant matter.

² Hereinafter, "the American Convention" or "the Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

Rights declared admissible	Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy) and 25 (right to judicial protection) of the American Convention in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. FACTS ALLEGED

1. The petitioners allege the international responsibility of the Mexican State for the violation of the human rights of Messrs. Horley Rengifo Pareja, Ricardo Martinez Rodriguez and Jenny Hurtado Beltran due to their illegal detention; preventative detention; lack of investigation and punishment of the acts of torture inflicted against them; and for the prosecution and criminal convictions of Messrs. Rengifo and Martinez, which would not have complied with due process guarantees.

2. The Commission observes that the petitioners have repeatedly provided abundant information regarding the facts of the case, which is generally confusing and imprecise. However, from a careful analysis of said information, the Commission can specifically extract the following alleged facts:

(a) On November 29, 2007, Mr. Ricardo Martinez Rodriguez (hereinafter “Mr. Martinez”) was detained at the Mexico City airport, without a warrant being issued against him. They state that he was boarded in a vehicle, in which he was physically and psychologically tortured for four hours by agents of the Attorney General's Office and the Drug Enforcement Administration (“DEA”), with the intent to obtain from him a statement for crimes that he would not have committed, as well as the location of cash that he supposedly knew about.

(b) On November 30, 2007, Mr. Martinez was admitted to the Organized Crime Investigation Sub-Prosecutor's Office (SIEDO), without informing him of the reason for his detention and, under threats, he was forced to sign a statement for crimes he did not commit; also incriminating other subjects. They state that for ninety-two hours he did not have a defense attorney or, as a Colombian national, consular assistance. They point out that he declared before the Federal Public Ministry the acts of torture to which he was subjected to during and after his detention; In addition, they argue that physical and psychological integrity tests were not carried out at the time of rendering his ministerial statement.

(c) Mr. Martinez remained in preventative detention for eighty-seven days in the Organized Crime Investigation Sub-Prosecutor's Office until he was transferred to the North Male Preventative Detention Centre, where the Third District Court of Federal Criminal Proceedings in the Federal District issued a formal arrest warrant against him for the crimes of operations with resources of unlawful origin and organized crime. They maintain that Mr. Martinez, at the time of rendering his statement before said court, informed them of the acts of torture to which he was subjected to.

(d) On January 22, 2015, the Third District Court of Federal Criminal Proceedings in Mexico City dismissed the criminal case filed against Mr. Martinez for the crime of organized crime; however, he was sentenced to six years and three months in prison for his responsibility in committing the crime of operations with resources of unlawful origin.

(e) On the other hand, they narrate that on November 30, 2007, sixteen agents from the Office of the Attorney General of the Republic raided the home of Mr. Horley Rengifo Pareja (hereinafter “Mr. Rengifo”), where his wife, the Mrs. Jenny Hurtado Beltran (hereinafter Mrs. “Hurtado”) and her newborn daughter. They

maintain that said raid was carried out without a court order against them; that the police agents severely beat Mr. Rengifo; they plunged his head into the toilet; a towel was tied to his mouth; they poured sparkling water into his nose and lotion into his eyes. All this in order to obtain the location of a sum of money, which, they affirmed, did not exist. They maintain that at that moment the police agents asked Mr. Rengifo for a million dollars in exchange for his release and that of his spouse; and that they stole money and other belongings from his home.

(f) They indicate that the same day of his arrest, Mr. Rengifo was transferred to the Organized Crime Investigation Sub-Prosecutor's Office, where he was subjected to acts of psychological torture by agents of the Republic's Attorney General's Office, who threatened to kill him, his spouse and his daughter, in order to extract from him a confession for crimes that he would not have committed, all in the presence of DEA agents. They state that Mr. Rengifo spent eighty-seven days in in preventative detention in said sub-prosecutor's office.

(g) After Mr. Rengifo's statement under torture, the police agents simulated his capture at the Mexico City airport, supposedly while he was going to Venezuela with a large amount of cash. Subsequently, Mr. Rengifo was transferred to the Male Preventative Detention Center in the north of Mexico City. They point out that on February 28, 2008, Mr. Rengifo testified before the Third Judge of the Federal Criminal Proceedings District about the acts of torture he suffered during his detention.

(h) Subsequently, on September 11, 2014, after seven years and six months without having issued a judgment against Mr. Rengifo, the Third District Court for Federal Criminal Proceedings in Mexico City dismissed the criminal case pursued against him for the crime of organized crime; however, he was sentenced to six years and three months in prison for the crime of operations with resources of unlawful origin. Both Mr. Rengifo and the Public Ministry appealed the conviction; however, on April 14, 2015, the Fifth Unitary Criminal Court of the First Circuit confirmed the appealed judgment.

(i) On June 5, 2016, Mr. Rengifo was extradited to the United States of America for the same crime for which he was sentenced in Mexico, thereby violating the principle of double jeopardy (*non bis in idem*). They point out that in October 2016, Mr. Rengifo was released by the United States authorities.

(j) They also mention that Mrs. Hurtado was detained by PGR agents on the same day as Mr. Rengifo, remaining in preventative detention for sixty-three days. They state that during her detention, Mrs. Hurtado suffered physical and psychological mistreatment; and they prevented her from feeding her newborn daughter, causing her health problems – the petitioner has not specified the place where Mrs. Hurtado remained detained or what were the acts of torture inflicted against her.

(k) On the other hand, from the information presented by the petitioner, it can be inferred that, derived from complaints filed by Mrs. Hurtado and Mr. Rengifo and Mr. Martinez, the National Human Rights Commission carried out various procedures in which it detected probable irregularities of a criminal and administrative nature attributable to the agent of the Public Ministry in charge of the preliminary investigation initiated against Messrs. Rengifo and Martinez. In addition, derived from the alleged attacks suffered by Mr. Rengifo at the time of his arrest, which were exposed before the Third District Judge of Federal Criminal Proceedings in the Federal District, the preliminary investigation 102/AP/DGDCSPI/2013 was initiated by the General Directorate of Crimes Committed by Public Servants, to which Mr. Martinez was attached. However, by means of official letter V3/68592 of September 18, 2013, the Third General Inspectorate of the CNDH determined that, since the aforementioned investigations were in force by the respective judicial authority, that body was not competent to rule on the violations of the rights alleged by the detainees.

(l) With respect to Maria Camila Rengifo Hurtado, who was twenty days old at the time of her parents' arrest, they state that the Mexican police agents and the DEA attempted against her life and her psychosocial development, because she was separated from her mother, so she was only fed with water. They also maintain that the girl was deprived of her liberty together with her grandmother for four days in her own home.

(m) In different communications, the petitioner reiterates the following details: (i) Messrs. Rengifo and Martinez were co-accused by the Attorney General's Office for their alleged responsibility in the commission of

crimes of organized nature and operations with resources of unlawful origin; (ii) on repeated occasions, Messrs. Rengifo and Martinez denounced before the Third District Court for Federal Criminal Proceedings and before the Public Prosecutor, the acts of torture to which they were exposed to at the time of their arrest and during their preventative detention; (iii) in the Male Preventative Detention Center in the north of Mexico City they suffered inhumane treatment, due to a precarious and unhealthy diet and they did not receive adequate medical care; (iv) Mrs. Hurtado, after being released, was harassed by the Mexican police agents, subjected to death threats, constant surveillance, forcing her to leave Mexico to avoid testifying on behalf of her husband, Mr. Rengifo; and (v) they allege the lack of investigation and punishment of those responsible for the acts of torture inflicted against the alleged victims.

Position of the State

3. For its part, the Mexican State details the course of the criminal proceedings against Messrs. Rengifo and Martinez, who were co-defendants for the crimes of operations with resources of unlawful origin and organized crime; Regarding Mrs. Hurtado, it maintains that she was not prosecuted for any crime. On the other hand, it requests the IACHR that the petition be declared inadmissible due to failure to exhaust domestic remedies in relation to the criminal proceedings against Messrs. Rengifo and Martinez; as well as for the alleged acts of torture inflicted against both of them.

Horley Rengifo Pareja

4. The Mexican State indicates that on November 30, 2007, the Office of the Attorney General of the Republic initiated the preliminary investigation PGR/SEIDO/UEIORPIFAM/186/2007 against Mr. Rengifo for his alleged responsibility in the commission of crimes involving operations with resources of unlawful origin and organized crime, being arrested that same day. The State affirms that, as he is a Colombian national, on December 1, 2007, the attorney general's office notified the Colombian Embassy in Mexico of his arrest by telephone.

5. It states that once he was detained, on November 30 and December 3, 2007; as well as on February 28, 2008, while he was at the disposal of the Public Prosecutor, he underwent various medical examinations, in which it was concluded that the injuries he presented when he was turned over to the authorities did not endanger his life and that these would take less than fifteen days to heal, and that such marks were compatible with the subjugation, restraint and transfer maneuvers as a detainee.

6. On the other hand, it argues that Mr. Rengifo did not exhaust domestic remedies against the criminal proceeding that sentenced him to six years and three months in prison. It establishes that, against the refusal of the appeal filed by Mr. Rengifo, he had at his disposal the writ of amparo, which is a suitable and effective remedy for the purpose of informing the Mexican judicial authorities of the irregularities alleged in his criminal proceedings.

7. On the other hand, regarding the investigations into the acts of torture allegedly inflicted against it, Mexico indicates that preliminary investigation 102/AP/DGDCSPI/13 began in 2013, which was in force as of the date of the last communication of the state –August 19, 2019–; therefore, it considers that since the investigation is ongoing, this petition does not comply with the provisions of Article 46.1.a) of the American Convention with respect to this point.

8. On the other hand, it states that on July 16, 2010, parallel to the criminal proceeding against Mr. Rengifo, the government of the United States of America requested his provisional detention for extradition purposes to which, on March 12, 2012, the Ministry of Foreign Affairs agreed to. Dissatisfied, Mr. Rengifo filed an action for the protection of constitutional rights (amparo), which was referred to the Third District Court for Amparo in Criminal Matters in the Federal District, under the file 527/2013-II; however, on August 28, 2013, said court dismissed the trial. Against this, Mr. Rengifo filed an appeal for review, which was referred to the Third Collegiate Court in Criminal Matters of the First Circuit; In a judgment dated March 20, 2014, the aforementioned court confirmed the first instance ruling. Finally, on June 5, 2016, he was extradited to the United States of America for the same crime for which he was tried before the Mexican authorities.

Ricardo Martinez Rodriguez

9. With respect to Mr. Martinez, Mexico indicates that on November 30, 2007, the Office of the Attorney General of the Republic initiated the preliminary investigation PGR/SEIDO/UEIOPIFAM/186/2007 against him for his alleged responsibility in the commission of the crimes of operations with resources of unlawful origin and organized crime, being arrested that same day. The State affirms that, as he is a Colombian national, on December 1, 2007, the attorney general's office notified the Colombian Embassy in Mexico of his arrest by telephone.

10. Once made available to the Public Ministry, on November 30 and December 3, 2007; as well as on February 28, 2008, different medical examinations were carried out on Mr. Martinez, concluding that he had no injuries. On August 15, 2008, Mr. Martinez's legal defense presented a psychological opinion, concluding that he presented chronic post-traumatic stress derived from psychological intimidation at the time of making his statement; In addition, on December 22, 2008, his legal defense presented an opinion on his injuries before the Third District Court of Federal Criminal Proceedings in Mexico City; however, since Mr. Martinez refused to be examined by the ministerial medical experts, the injuries after his arrest could not be related to the alleged acts of torture.

11. As a result of the investigations carried out into the acts of torture inflicted against Mr. Martinez, on August 3, 2010, experts attached to the Department of Psychology of the Attorney General's Office issued psychological opinion based on the Istanbul Protocol concluding that "Mr. Martinez Rodriguez did not present psychological reactions, nor the diagnostic criteria commonly expected in survivors of torture and/or mistreatment."

12. Regarding the failure to exhaust domestic remedies, related to the criminal proceeding against Mr. Martinez, Mexico argues that he did not appeal the judgment of January 22, 2015 that sentenced him to six years and three months in prison for the crime of operations with resources of unlawful origin, having at his disposal the appeal provided for in Mexican regulations, a resource whose purpose is to examine the proper application of regulations or if any principle of evidentiary assessment was violated, if there was any alteration in the facts or if it was improperly founded and motivated. Therefore, it concludes that Mr. Martinez did not exhaust the suitable and effective remedy for the purposes of challenging the conviction handed down against him, preventing the domestic judicial authorities from analyzing the violations exposed before the Inter-American System.

13. On the other hand, Mexico indicates that preliminary inquiry 102/AP/DGDCSPI/13 was initiated in 2013, which was in force as of the date of the last communication from the state –August 19, 2019; therefore, it considers that since the investigation is ongoing, this petition does not comply with the provisions of Article 46.1.a) of the American Convention with respect to this point.

Jenny Hurtado Beltran and Maria Camila Rengifo Hurtado

14. Regarding the detention of Mrs. Hurtado, Mexico affirms that she was released as it was not proven that she was responsible for the commission of a crime; and that from the examinations carried out on her by the ministerial authorities, it could not be concluded that she had been a victim of ill-treatment or acts of torture. Regarding the newborn, Maria Camila Rengifo, the State maintains that the girl was not detained at any time by the state authorities.

15. Lastly, it argues that this petition does not expose human rights violations, particularly since the Colombian Embassy in Mexico was notified immediately of the arrest of Messrs. Rengifo and Martinez by telephone and, subsequently, on December 1, 2007 in writing. In addition, it states that the injuries suffered by Messrs. Rengifo and Martinez were caused by restraint maneuvers carried out by the police agents at the time of their arrest, which took no more than fifteen days to heal and, therefore, would not have constituted to acts of torture.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. In the present case, the petitioners raise a double claim before the IACHR; on the one hand, they denounce that Messrs. Rengifo and Martinez were tortured by police agents in order to extract confessions for crimes that they did not commit; and that said ill-treatment and torture have not been duly investigated, giving decisive probative value to the confessions extracted by these means. On the other hand, they denounce that Mrs. Hurtado was subjected to ill-treatment and psychological torture during the period in which she remained detained; that Messrs. Rengifo and Martinez were illegally detained, since their arrest was not preceded by a court order; they were not informed of the reason for their detention; they were kept incommunicado for several hours; they did not have a defense attorney; they were not immediately made available to a judge; and both remained in preventative detention for more than eighty days.

Alleged acts of torture

17. The uniform jurisprudence of the IACHR has established that in the event of alleged cases of torture, the State has the unofficial duty to initiate, promote, and complete a criminal investigation that allows the perpetrators of such crimes to be tried and punished.⁴ When the news about torture has been brought to the attention of the authorities, through one or several of the channels provided for in the domestic sphere and the criminal justice system has refrained from initiating the corresponding investigation, the IACHR has declared the exception of unjustified delay applicable in relation to the duty to exhaust domestic remedies.⁵

18. In this sense, in the present case it has been argued that: (i) Messrs. Rengifo and Martinez denounced the torture of which they were victims from the date of their arrest before the judicial authorities that processed their criminal proceedings; (ii) that there are medical and psychological records of the injuries they suffered as a result of said torture; and (iii) that the Third General Inspectorate of the National Human Rights Commission recommended the opening of criminal investigations into these facts. Consequently, the Mexican criminal justice system, in response to these recommendations, initiated a preliminary investigation; however, as the State has reported as of August 2019, they would not have made any significant progress. Thus, the Commission concludes from the information available in the file of this matter, that the acts of torture inflicted against Messrs. Rengifo and Martinez have not been duly investigated. Therefore, the IACHR considers that this end of the petition has included the exception of unjustified delay in resolving domestic remedies, provided for in Article 46.2.c) of the American Convention.

19. Likewise, taking into account that the torture denounced occurred in November 2007; that the petitioners repeatedly denounced these facts throughout the criminal proceeding; that the criminal investigations into torture began in 2013, and that the petition was received by the Executive Secretariat prior to the initiation of said investigations, the IACHR concludes that the petition was filed within a reasonable time under the terms of article 32.2 of the Regulation of the Commission.

20. On the other hand, with respect to the alleged acts of torture inflicted against Mrs. Jenny Hurtado Beltran during her preventative detention, as well as the effects on her newborn daughter, Maria Camila Rengifo Hurtado, the Commission observes that the information provided by the petitioner is manifestly scarce or insufficient to determine whether domestic remedies have been exhausted, or even for the configuration of some potential scenario of impunity derived from the alleged lack of investigation of the facts denounced in the petition. Indeed, the petitioner does not provide any information regarding criminal complaints filed by Mrs. Hurtado on her behalf or on behalf of her daughter, nor does it provide documentation establishing that she was the victim of ill-treatment or torture, as has been alleged throughout the request. By

⁴ IACHR, Report N.37/18. Admissibility. Patricio Germán García Bartholin. Chile. May 4, 2028, par. 19; Report N. 156/17. Admissibility. Carlos Alfonso Fonseca Murillo. Ecuador. November 30, 2017, par 13.

⁵ IACHR, Report N. 166/17. Admissibility. Fausto Soto Miller. Mexico. December 1, 2017, pars. 5, 11; Report N. 4/19. Petition 673-11. Admissibility. Fernando Alcântara de Figueiredo and Laci Marinho de Araújo. Brasil. January 3, 2019, par. 22; Report No. 122/17. Petition 156-08. Admissibility. Williams Mariano Paría Tapia. Perú. September 7, 2017, par. 16; Report No. 20/17. Admissibility. Rodolfo David Piñeyro Ríos. Argentina. March 12, 2017, par. 5.

virtue of the foregoing, the Commission concludes that this argument regarding Mrs. Hurtado is inadmissible under the terms of Articles 46.1.a) and 47.a) of the American Convention, and 31.1 of the Rules of Procedure.

Illegal detention, preventative detention and criminal process

21. Regarding the aforementioned illegal and preventative detention of Messrs. Rengifo and Martinez, the IACHR observes that these allegations were raised in a different manner by each of them, according to the following:

22. It appears from the file that Mr. Rengifo filed an appeal against his conviction; however, on September 11, 2014, the Fifth Unitary Criminal Court of the First Circuit confirmed the appealed ruling. The State, for its part, has stated that Mr. Rengifo did not file an action for the protection of constitutional rights (amparo) against the refusal of the appeal, establishing that the amparo proceeding is a suitable and effective remedy, for the purpose of informing the Mexican judicial authorities of the irregularities carried out in the framework of the criminal process that he considers to be violations of his human rights.

23. In this sense, the Commission recalls that, although in some cases extraordinary remedies may be adequate to address human rights violations, as a general rule the only remedies that need to be exhausted are those whose functions within the legal system make them appropriate to remedy an infringement of a certain legal right. In principle, these are ordinary and not extraordinary resources.⁶ Likewise, for the purposes of the rule of exhaustion of domestic remedies, extraordinary remedies that the petitioner or alleged victim has not voluntarily decided to file are not suitable remedies to discuss claims for violations of judicial guarantees.⁷ In the instant case, the action for the protection of constitutional rights that the State alleges should have been exhausted by Mr. Rengifo is, in the opinion of the Inter-American Commission, of an extraordinary nature. Thus, in view of the particularities of this case, the IACHR does not consider that it should have exhausted it as a requirement to resort to the Inter-American System. Therefore, with respect to this point, the petition meets the requirement set forth in Article 46.1.a) of the American Convention.

24. Regarding the deadline for submission, the Commission notes that the petition was submitted on November 4, 2011, and, according to the record, the final decision regarding the criminal proceeding against Mr. Rengifo is the one adopted on April 14, 2015, that is, said process culminated after the presentation; therefore, the Commission concludes that it complies with the requirement of Article 46.1.b) of the Convention.

Ricardo Martinez Rodriguez

25. Regarding the criminal proceeding against Mr. Martinez, the Commission notes that on January 22, 2015, the Third District Court for Federal Criminal Proceedings in Mexico City sentenced him to six years and three months in prison for the crime of operations with resources of unlawful origin. However, said resolution was not appealed, and therefore, it was enforceable on February 6, 2015. In this sense, the State has alleged the lack of exhaustion of domestic remedies, establishing that the appeal was the appropriate one and adequate to dispute the irregularities of the criminal process. In this regard, the petitioner has not established any of the exceptions to the exhaustion of domestic remedies provided for in the American Convention, which could be applicable to this end of the petition. Based on the foregoing, the Commission concludes that this submission of the petition is inadmissible under the terms of Articles 46.1.a) and 47.a) of the American Convention.

⁶ IACHR, Report N. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Peru. November 30, 2017, par. 12.

⁷ IACHR, Report N. 154/10, Petition 1462-07. Admissibility. Linda Loaiza López Soto and family. Venezuela. November 1, 2010, par. 49; Report N. 111/19. Petition 335-08. Admissibility. Marcelo Gerardo Pereyra. Argentina. June 7, 2019, 11 and subsequent; Report N. 167/17. Admissibility. Alberto Patistán Gómez. Mexico. December 1, 2017, par. 13 and subsequent.

VII. ANALYSIS OF COLORABLE CLAIM

26. The State has argued that the petition does not characterize violations of the rights protected in the American Convention, justifying that the injuries suffered by Messrs. Rengifo and Martinez were not due to torture and did not cause them suffering; and that the criminal proceedings brought against him was carried out in compliance with due process. In this regard, the Commission notes, in view of the allegations set forth in the petition, that there is a factual and legal dispute between the parties that must be studied and resolved by the IACHR in the merits stage. Said controversy cannot be resolved in the present phase of admissibility, which is characterized by a *prima facie* analysis, but requires an examination of the merits in light of the American Convention and other applicable legal instruments, as well as the evidence available for that time in the record.

27. In relation to the foregoing, the Commission recalls that the evaluation criteria for the admissibility phase differs from that used to rule on the merits of a petition; the Commission must carry out a *prima facie* evaluation to determine whether the petition establishes the grounds for the possible or potential violation of a right guaranteed by the Convention, but not to establish the actual existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply prejudging the merits of the matter.⁸

28. On the other hand, with respect to the conventional incompatibility of the figure of preventative detention to which Messrs. Rengifo and Martinez were exposed, the Inter-American Court has recently established that: “[...] *in relation to the figure of preventative detention as a measure of a pre-procedural nature that restricts freedom to safeguard the investigative process, the Court understands that it is incompatible with the American Convention, since the premises that define its inherent characteristics do not coexist peacefully with the rights to personal liberty and the presumption of innocence [...]*”.⁹

29. Based on these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a thorough study, since the alleged facts, if corroborated, could characterize violations of Articles 5 (personal integrity), 7 (personal liberty), 11 (privacy), 8 (fair trial), and 25 (judicial guarantees) of the American Convention, in relation to its Article 1.1 (obligation to respect rights) and 2 (domestic legal effects), as well as articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Horley Rengifo Pareja and Ricardo Martinez Rodriguez, in the terms of this report.

30. Finally, the Commission does not observe factual elements or allegations that allow establishing *prima facie* the possible violation of Articles 14 (right to rectification), 17 (protection of the family) and 24 (equality before the law) of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, 8, 11 and 25 of the American Convention in relation to articles 1.1 and 2, as well as articles 1, 6 and 8 of the Inter-American Convention to prevent and Punish Torture;

2. To find the instant petition inadmissible in relation to Articles 14, 17 and 24 of the American Convention; and

3. To notify the parties of this decision; to proceed to the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

⁸ IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, par. 48

⁹ I/A Court H.R., Case of Tzompaxtle Tecpile et al. v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 7, 2022. Series C No. 470, par. 216; I/A Court H.R., Case of García Rodríguez et al. v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 25, 2023. Series C No. 482, par. 300.

Approved by the Inter-American Commission on Human Rights on the 9th day of the month of June, 2023.
(Signed:) Margarette May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Stuardo Ralón Orellana, Commissioners.